

UNITED STATES DISTRICT COURT  
DISTRICT OF NEVADA

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POWER EFFICIENCY CORPORATION,

Plaintiff,

v.

RESOURCE ENERGY SYSTEMS  
TECHNOLOGIES, et al.,

Defendants.

2:09-CV-01468-LRH-RJJ

ORDER

Before the court is plaintiff Power Efficiency Corporation's ("PEC") motion to alter or amend the court's order and judgment. Doc. #20<sup>1</sup>.

Defendant Resource Energy Systems Technologies ("REST") filed a motion to dismiss for lack of personal jurisdiction. Doc. #8. The court granted REST's motion (Doc. #18) and judgment was entered dismissing REST from the action (Doc. #19). PEC files the present motion to amend the court's order because it did not distinguish whether dismissal was with or without prejudice. Further, PEC requests that the judgment be amended to reflect that REST's dismissal was not an adjudication on the merits.

Pursuant to Federal Rule of Civil Procedure 41(b) dismissals for lack of jurisdiction, either subject matter or personal, are not an adjudication on the merits. Further, when an order fails to

<sup>1</sup> Refers to the Court's docket number.

1 specify whether dismissal is with or without prejudice, under Rule 41 the order is to be interpreted  
2 as a dismissal without prejudice. *See Hargis v. Foster*, 312 F.3d 404, 407 (9<sup>th</sup> Cir. 2002). Thus, the  
3 court's order was not an adjudication on the merits and dismissal was without prejudice. The court  
4 therefore finds that, in light of Fed. R. Civ. P. 41, it is unnecessary to amend or alter the judgment.

5 IT IS THEREFORE ORDERED that plaintiff's motion to alter or amend judgment (Doc.  
6 #20) is DENIED as moot.

7 IT IS SO ORDERED.

8 DATED this 25<sup>th</sup> day of January, 2010.



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LARRY R. HICKS  
UNITED STATES DISTRICT JUDGE